

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:05CV310-3-V
3:98CR93-V

DARIUS KEITH RAINEY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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ORDER

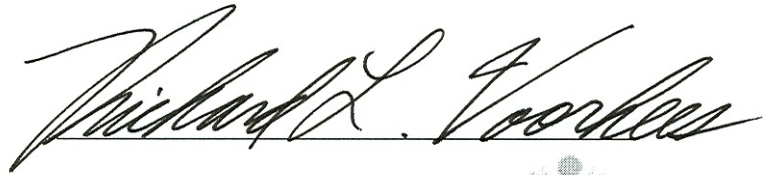
THIS MATTER is before the Court upon Petitioner’s “Motion to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody, filed June 28, 2005. For the reasons stated herein, the Petitioner’s Motion to Vacate will be dismissed.

In reviewing the record, the Court notes that Petitioner filed a previous Motion to Vacate, Set Aside or Correct Sentence on March 20, 2001, (case number 3:01cv137), which was denied by this Court on September 12, 2002 . (Document No 12.) Petitioner’s previous § 2255 filing makes the instant filing a second or successive petition under the Antiterrorism and Effective Death Penalty Act (the “AEDPA”). See 28 U.S.C. § 2255. The AEDPA requires that a “second or successive motion must be certified . . . by a panel of the appropriate court of appeals . . .” before it can be filed in the District Court. Id. “Before a second or successive application [for habeas corpus] is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” 28 U.S.C. § 2244 (b)(3)(A). Thus, this Court may not consider the merits of Petitioner’s claims because he failed to first certify his motion with the Fourth Circuit Court of Appeals before filing it in the District

Court.

THEREFORE, IT IS HEREBY ORDERED that Petitioner's Petition for a Writ of Habeas Corpus is **DISMISSED** without prejudice.

Signed: July 11, 2005

A handwritten signature in black ink, reading "Richard L. Voorhees". The signature is written in a cursive style with a horizontal line underneath the name.

Richard L. Voorhees
United States District Judge

